



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Akwata Otinga and Matayos Sheunda (Deceased) (Succession Cause 308 of 2014) [2024] KEHC 12600 (KLR) (22 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 308 OF 2014
WM MUSYOKA, J
OCTOBER 22, 2024**

**IN THE MATTER OF THE ESTATE OF AKWATA
OTINGA AND MATAYOS SHEUNDA (DECEASED)**

RULING

1. This cause is purported to relate to an estate of 2 individuals, Akwata Otinga and Matayos Sheunda. There cannot be a joint estate of 2 individuals, for succession purposes. There can only be 1 estate for each individual. There must be 1 for Akwata Otinga, and another for Matayos Sheunda.
2. There can only be 1 succession cause in respect of the estate of 1 individual, and a single succession cause should not combine administration of estates of 2 or more individuals. There can only be 1 administration for each estate. See *In Re Estate of James Kiarie Muiruri (Deceased)* [2004] eKLR (Koome, J), *In re Estate of Samuel Ngugi Mbugua (Deceased)* [2017] eKLR (Musyoka, J) and *In re Estate of Josphat Gatia Muchiri (Deceased)* [2018] (Musyoka, J). In this case 2 causes ought to have been initiated, 1 in the estate of Akwata Otinga, and the other in the estate of Matayos Sheunda.
3. I have seen a copy of the search certificate, in respect of the estate asset, South Teso/Amukura/182, and I have noted that the property was registered in the names of 3 individuals, including Akwata Otinga and Matayos Sheunda, with each holding a 1/3 share. That meant that the 3 held the property in tenancy in common, with each of the co-owners having a distinct 1/3 share. See *In re Estate of John Ngumba Njoroge (Deceased)* [2018] eKLR (J. Ngugi, J) and *In re Estate of Philip Nguli Kivulu (Deceased)* [2021] eKLR (Odunga, J). Upon the demise of Akwata Otinga and Matayos Sheunda, their estates were entitled to a 1/3 share each. Succession ought to have been sought separately for each 1/3 share. Tuiyott J said as much, in the ruling that was delivered in Busia HCSC No. 277 of 2014, on 14th March 2016.
4. Succession to 2 separate estates cannot be litigated in 1 succession cause. See *In re Estate of Godfrey Kituku (Deceased) & Regina Mukui Ndaka (Deceased)* [2017] eKLR (Chitembwe, J) and *In re Estate of Rolf Rainer Schmid (Deceased)* [2017] eKLR (Musyoka, J). The administrations of the 2 estates herein must be separated, and distribution of each estate be done in separate proceedings.



5. The matter shall be mentioned on 18th November 2024, by which date the parties hereto should have decided on the way forward. In the event that they will have not decided one way or the other, I shall be forced to direct that the 2 files, in Busia HCSC No. 277 of 2014 and Busia HCSC No. 308 of 2014, be closed, so that separate causes are initiated for each of the dead individuals. The parties should have taken the cue from Tuiyott J, in the ruling, in Busia HCSC No. 277 of 2014, of 14th March 2016, when he described the proceedings as “unusual,” for purporting to relate to 2 deceased persons.
6. Orders accordingly.

RULING DATED AND SIGNED AT BUSIA, AND DELIVERED VIA EMAIL, ON THIS 22ND DAY OF OCTOBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the administrator.

Mr. Luchivya, instructed Marisio Luchivya & Company, Advocates for Jenipher Amoit Nanjala.

